

# CITY OF SMYRNA COMMUNITY DEVELOPMENT MEMORANDUM

To: Mayor and Council

From: Russell Martin, AICP, Director of Community Development

Date: November 23, 2020

CC: Joe Bennett – Interim City Administrator  
Scott Cochran – City Attorney

**RE: Code Amendments – Occupational Tax Certificate – Gross Receipts**

## BACKGROUND

In preparation of the distribution of the invoices for the renewal of occupational tax certificates, Community Development reviewed the state code for compliance and found the City's definition of gross receipts varies from the State's definition. Community Development is recommending a text amendment to bring the City's definition of gross receipts inline with the State's definition.

## ANALYSIS

Community Development has provided a comparison of the City's definition versus the State's definition in the table below to highlight the differences between the definitions. The variances between the code sections are highlighted in red.

**Comparison of Gross Receipts Definition**

City's Definition	State's Definition
<b>Gross receipts shall include the following:</b>	
Total income without deduction for the cost of goods or expenses incurred.	Total income without deduction for the cost of goods <b>sold</b> or expenses incurred.
Gain from trading in stocks, bonds, capital assets or instruments of indebtedness.	Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness.
Proceeds from commissions on the sale of property, goods or services.	Proceeds from commissions on the sale of property, goods, or services.
Proceeds from rent, interest, royalty or dividend income.	Proceeds from rent, interest, royalty, or dividend income.
	<b>Proceeds from fees charged for services rendered.</b>
<b>Gross receipts shall not include the following:</b>	
Sales, use or excise tax.	Sales, use, or excise taxes.

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<p>Sales returns, allowances and discounts.</p> <p>Interorganizational sales or transfers between or among the units of a parent-subsiary controlled group of corporations as defined by 26 U.S.C. § 1563(a)(1) or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. § 1563(a)(2).</p>	<p>Sales returns, allowances, and discounts.</p> <p>Interorganizational sales or transfers between or among the units of a parent-subsiary controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(2), <b>between or among a parent corporation, wholly owned subsidiaries of such parent corporation, and any corporation in which such parent corporation or one or more of its wholly owned subsidiaries owns stock possessing at least 30 percent of the total value of shares of all classes of stock of such partially owned corporation, or between or among wholly owned partnerships or other wholly owned entities.</b></p>
<p>Payments made to a subcontractor or an independent agent.</p>	<p>Payments made to a subcontractor or an independent agent <b>for services which contributed to the gross receipts in issue.</b></p>
<p>Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a nonprofit organization which employs salaried practitioners otherwise covered by this article.</p>	<p>Governmental and foundation grants, charitable contributions, or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this chapter, <b>if such funds constitute 80 percent or more of the organization's receipts.</b></p>
	<p><b>Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.</b></p>

Community Development is proposing eliminating the City’s definition of gross receipts and creating a new definition that references the State Code which would account for any future amendments to state law for occupational taxation.

**The following are proposed code amendments to several sections of the Chapter 22 of the City Ordinance and are presented in draft legislative format (all changes are highlighted, underlined items should be added and items with strikethroughs should be removed):**

***Amend Section 22-26 of Chapter 22 – Businesses of the City’s Code of Ordinances to amend the following definition of gross receipts:***

**Sec. 22-26. - Definitions.**

~~Gross receipts means the total revenue of the business or practitioner for the period, including without limitation the following:~~

- ~~(1) Total income without deduction for the cost of goods or expenses incurred.~~
- ~~(2) Gain from trading in stocks, bonds, capital assets or instruments of indebtedness.~~
- ~~(3) Proceeds from commissions on the sale of property, goods or services.~~
- ~~(4) Proceeds from rent, interest, royalty or dividend income.~~

Gross receipts shall not include the following:

- ~~(1) Sales, use or excise tax.~~
- ~~(2) Sales returns, allowances and discounts.~~
- ~~(3) Interorganizational sales or transfers between or among the units of a parent-subsidary controlled group of corporations as defined by 26 U.S.C. § 1563(a)(1) or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. § 1563(a)(2).~~
- ~~(4) Payments made to a subcontractor or an independent agent.~~
- ~~(5) Governmental and foundational grants, charitable contributions, or the interest income derived from such funds, received by a non-profit organization which employs salaried practitioners otherwise covered by this article.~~

Gross receipts shall have the meaning as defined under O.C.G.A. § 48-13-5(2)(A), which section, as amended from time to time, is hereby incorporated by reference.

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## STAFF RECOMMENDATION

Community Development recommends **approval** of the proposed text amendment to Chapter 22 - Businesses of the City's Code of Ordinances.